

2. Mr. Mercado conceded in his original § 2255 motion that his vacatur claim was “unripe,” as the constitutional challenge to his convictions in state court was then still “under review.” *Id.* Accordingly, on December 7, 2005, Mr. Mercado amended his § 2255 motion and omitted the unripe vacatur claim. *See* Docket No. 23.

4. On October 18, 2006, however, the Lowell District Court vacated Mr. Mercado’s two prior state court convictions. *See* Memorandum in Support of Second Amended Motion under § 2255, Exhibit D. Thus, Mr. Mercado seeks leave to amend his § 2255 motion a second time to reinsert the now-ripe vacatur claim.

5. Counsel have conferred with counsel for the government, Assistant U.S. Attorney Peter K. Levitt, and the government assents to this motion.

For the foregoing reasons, Mr. Mercado respectfully requests that the Court grant him leave to file the enclosed Second Amended Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence.

Respectfully submitted,

Dated: December 1, 2006

/s/ Roberto M. Braceras
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LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned certifies that, pursuant to Local Rule 7.1(A)(2), the moving party has conferred with counsel for the government, Assistant U.S. Attorney Peter K. Levitt, on the matters set forth in the foregoing motion, and the government assents to this motion.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on December 1, 2006.

Respectfully submitted,

/s/ Roberto M. Braceras

Dated: December 1, 2006

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